

## **Section 10 Regulatory Baseline for the State Water Project and Central Valley Project Pumping Plants**

The USACE has jurisdiction over the diversion of waters from navigable waterways under section 10 of the Rivers and Harbors Act of 1899.

On July 19, 1977, structures or work completed before December 18, 1968, or in waterbodies over which the District Engineer had not asserted jurisdiction at the time the activity occurred provided, and in both instances there is no interference with navigation, were Grandfathered by Nationwide Permits and unless modified, do not require further permitting. Based on that, the USACE established on October 13, 1981, that the SWP baseline operations for purposes of section 10 of the Rivers and Harbors Act of 1899 are as follows:

“The SWP is limited to daily diversion into Clifton Court Forebay would not exceed 13,870 acre-feet and the three day average diversions into Clifton Court Forebay would not exceed 13,250 acre feet. In addition, the SWP can increase diversions into Clifton Court Forebay by one third of the San Joaquin River flow at Vernalis during the period from mid-December to mid-March when the flow of the San Joaquin River at Vernalis exceeds 1,000 cubic feet per second (cfs).”

On October 31, 1979, the Ninth Circuit Court, in *Sierra Club v. Morton (Andrus)*, held that Congressional approval or authorization to construct a Federal project without a section 10 permit may be found in virtually any type of statute, including appropriations statute, so long as it is demonstrated that Congress had knowledge of the precise action and was explicitly and specifically addressing that project. For the Jones Pumping Plant, the basic enactments authorizing the CVP in 1937, and the annual appropriations acts for the operations and maintenance of the CVP, constitute affirmative Congressional authorization. Based on that, the baseline operations of the CVP is a rate of diversion of 4,600 cfs at the Jones Pumping Plant.